



## **FACT SHEET 22**

### **Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights**

**September 2005**

#### **Introduction**

In December 2003 representatives of the then 15 European Union Member States decided that the remit of the European Monitoring Centre on Racism and Xenophobia (EUMC) should be extended, in order to make it an Agency for Fundamental Rights. Since then there has been much discussion and debate as to how exactly this should be done, and what areas of fundamental rights would be covered by the extended Agency.

Following a public consultation the European Commission published a proposal for the establishment of the European Union Agency for Fundamental Rights in June 2005.

Of particular concern for ENAR is that the focus on racism should not be diluted as the Agency takes on extra responsibilities. Racism continues to be a very serious problem in the European Union Member States, and freedom from racism is one of the most widely recognised human rights. As the Commission has pointed out, the fight against racism is vital in the progression of the European Union, in particular “the Union’s objective of creating an area of freedom, security and justice will be incomplete as long as effective measures to prevent and combat racism and xenophobia are not in place.”<sup>1</sup>

This fact sheet provides an overview of the Commission’s proposal for the Agency. It remains to be seen how this proposal will be amended in the course of negotiations in the European Council, in consultation with the European Parliament. ENAR will actively engage in the process in the coming months in order to ensure that the extended Agency makes a value added contribution to the fight against racism and discrimination in Europe.

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<sup>1</sup> Commission Communication on the activities of the European Union Monitoring Centre on Racism and Xenophobia, COM (2003) 483 final, p. 2.

## **Process to date**

Following the European Council decision on 13 December 2003, the Commission launched a public consultation on the Fundamental Rights Agency on 25 October 2004. Amongst the written responses to the consultation there were almost 60 NGO contributions, including one from ENAR.<sup>2</sup> On 25 January 2005 the Commission held a public hearing on the role of the Agency.

ENAR welcomed the consultation initiative and the explicit acknowledgment of the crucial role played by NGOs in the promotion of fundamental rights in the EU. During the consultation ENAR raised a number of concerns regarding the Agency, amongst them that it:

- Should continue to give priority to the issues of racism and xenophobia, and address institutional racism.
- Should continue to gather civil society sources of data and information.
- Promote awareness raising and educational tool on fundamental rights.
- Promote close cooperation with civil society actors.
- Have adequate resources, and maintain its independence.

On 30 June 2005 the Commission published a proposal for a Council regulation establishing a European Union Agency for Fundamental Rights. Given that the Commission intends the Agency to be functioning by 1 January 2007, it is likely the decision on the Agency will be negotiated reasonably quickly.

## **Overview of the proposal**

Overall the proposal outlines the establishment of a European Agency to provide 'information, assistance and expertise on fundamental rights' to the European Union and its Member States when implementing Community law. In other words the Agency will be able to act in those areas where there is EU law, for example anti-discrimination, and not in other areas where there is no community competence, such as family law issues.

The work of the Agency will be closely linked to the Charter of Fundamental Rights,<sup>3</sup> though the proposal does suggest that the Agency will have to adopt multi-annual work programmes in order to prioritise its activities and limit its work. The rights covered by the Charter are very diverse and are elaborated in seven chapters: dignity, freedom, equality, solidarity, EU citizens rights, justice, and general provisions.

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<sup>2</sup> The responses, including ENAR's comments, and a summary of the consultation can be found at: [http://europa.eu.int/comm/justice\\_home/news/consulting\\_public/fundamental\\_rights\\_agency/news\\_contributions\\_fund\\_rights\\_agency\\_en.htm](http://europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/news_contributions_fund_rights_agency_en.htm)

<sup>3</sup> The Charter of Fundamental Rights of the European Union brings together into a single, simple text all the personal, civic, political, economic and social rights enjoyed by the citizens and residents of the European Union. The Charter is not legally binding, however its incorporation into the European Constitution means that after ratification of the Constitution it would be.

### *Activities of the Agency*

The Agency will have **11 main tasks** which in most cases represent an extension of the current activities of the EUMC<sup>4</sup> on racism to cover fundamental rights, though some are new or enhanced areas of departure for the Agency. The main tasks are:

- a) Collect, record and analyse information;
- b) Develop methods to improve the comparability of data across the EU;
- c) Carry out studies and research;
- d) Formulate opinions;<sup>5</sup>
- e) Provide technical expertise to the Council under Article 7 of the Treaty on European Union (new);
- f) Publish an annual report on fundamental rights;
- g) Publish thematic reports;
- h) Publish an annual report of its activities;
- i) Promote dialogue with civil society (enhanced);
- j) Organise events; and
- k) Awareness-raising with the general public (enhanced).

While the primary focus of the Agency will be on the European Union and its Member States, the Commission can ask the Agency for information on fundamental rights issues in third countries which the EU has agreements with containing provisions on respect of human rights.

### *Working methods*

The proposal envisages that the Agency will establish necessary information networks, which will take into account the expertise of a variety of actors. The proposal states that the Agency should cooperate with governmental and non-governmental organisations at European and Member State levels, and will enter into an agreement with the Council of Europe establishing close cooperation.

### *Structure of the Agency*

The proposed structure of the Agency builds on the existing organisation; like the EUMC the Agency for Fundamental Rights will have a management board, executive board, and director. However the Agency will also have a fundamental rights forum, which is a new departure.

The **Management Board** will consist of an independent representative from each Member State (fundamental rights experts), the European Parliament, the Council of Europe (though without full voting rights), and two representatives of the European Commission. The **Executive Board** will consist of the Chair, the Vice-Chair and the two Commission representatives.

The **Fundamental Rights Forum** will consist of representatives of civil society concerned with fundamental rights and the fight against racism, including NGOs,

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<sup>4</sup> See: Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, available at: [www.eumc.eu.int](http://www.eumc.eu.int)

<sup>5</sup> The Agency will not be able to issue opinions on proposals for legal instruments from the Commission, or on positions adopted by the European institutions during the decision-making procedure. The legality of European legislation is tested in the Court of Justice, and the Agency will not be able to issue an opinion on whether EU instruments are compliant with fundamental rights law.

social partners, professional organisations, churches, religious, philosophical and non-confessional organisations, academics, experts and European and international bodies and organisations. The 100 members of the Forum will be appointed by open selection, and they will have a term of office of five years. The Forum will primarily be a mechanism for information exchange, though it will be able to make suggestions for the annual work programme and provide feedback on the Annual Report on the situation of fundamental rights. The Forum will be chaired by the Director and will meet annually or at the request of the Management Board.

### **Decision-making procedure**

The decision-making procedure for the proposed regulation will be *Consultation*.<sup>6</sup> Consultation is the most limited form of participation by the European Parliament in the decision-making procedure and it is disappointing that members of the European Parliament will not play a more substantial role in formulating the final decision to establish the Agency. However, the Commission has committed itself to take account of the Parliament's views, and has therefore proposed that the European Parliament have some form of 'trilogue' on this proposal. There is no precedent for such a 'trilogue', so it is not yet clear what this enhanced form of Consultation will look like.

### **The Agency for Fundamental Rights and Racism**

The EUMC has played an important role in keeping the problem of racism on the European agenda. As the EUMC is extended racism must remain central to its activities in order to ensure that the work done to date is not lost. Consequently it is important that racism is named as a priority in the decision establishing the Agency, and in the day to day running of the Agency.

ENAR has acknowledged with satisfaction that the consultation process on the Agency confirmed that its core mission to monitor racism and xenophobia should not be diluted. According to the *Analysis of Responses to Public Consultation*, prepared by the European Policy Evaluation Consortium:

“respondents (Member States and European institutions) agreed that the focus and activities of the EUMC should be maintained, not least so as not to give the impression that Union's objectives in the field of fighting racism and xenophobia are abandoned.”<sup>7</sup>

National human rights institutions and NGOs also agreed that the focus on racism and xenophobia should be maintained. That racism should remain a priority for the Agency was also reflected during the public hearing held in Brussels on 25 January 2005. At the hearing, Commissioner Frattini pointed out that there is “unanimity as regards the need to keep the themes of racism and xenophobia at the heart of the Agency's activities.”<sup>8</sup>

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<sup>6</sup> Under the consultation procedure, the Council consults Parliament as well as the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). Following one reading in the Parliament, it can: approve the Commission proposal; reject it; or ask for amendments. If Parliament asks for amendments, the Commission will consider all the changes Parliament suggests. If it accepts any of these suggestions it will send the Council an amended proposal.

<sup>7</sup> EPEC (2005) Preparatory Study for Impact Assessment and Ex-Ante Evaluation of Fundamental Rights Agency, Analysis of Responses to Public Consultation, p. 10.

<sup>8</sup> EPEC (2005) Preparatory Study for Impact Assessment and Ex-Ante Evaluation of Fundamental Rights Agency, Public Hearing Report, p. 38.

The Commission's proposal acknowledges the importance of maintaining racism through both the overall mandate of the Agency, but also in the implementation of some of its key tasks. The work of the Agency will be linked to the Charter of Fundamental Rights. Article 21 (non-discrimination) refers to race, colour, ethnic or social origin, religion or belief, and membership of a national minority, hence the Agency will have a general mandate to address racism and discrimination.

The proposal seeks to ensure a specific focus on racism by making specific reference to it in two ways:

- The multi-annual framework for the activity of the Agency will determine the thematic focus on the Agency and will always include the fight against racism and xenophobia.
- The membership of the Forum will be drawn from those working on fundamental rights and racism, xenophobia and anti-Semitism (though there is no indication of what proportion the latter will represent).

### **Key documents**

- European Charter on Fundamental Rights,  
[http://europa.eu.int/comm/justice\\_home/fsj/rights/charter/fsj\\_rights\\_charter\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/rights/charter/fsj_rights_charter_en.htm)
- Public Consultation on the establishment of a Fundamental Rights Agency,  
[http://europa.eu.int/comm/justice\\_home/news/consulting\\_public/fundamental\\_rights\\_agency/index\\_en.htm](http://europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/index_en.htm)
- Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights, [COM(2005) 280 final],  
[http://europa.eu.int/comm/justice\\_home/doc\\_centre/rights/doc/com\\_2005\\_280\\_en.pdf](http://europa.eu.int/comm/justice_home/doc_centre/rights/doc/com_2005_280_en.pdf)

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*ENAR is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.*



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